S.B.CIVIL WRIT PETITION NO.4650/2003

Smt. Kamala Devi
v.
Chairman-cum-Managing Director, Jodhpur Vidhyut Vitran Nigam Limited, Jodhpur and others.

DATE OF ORDER :: 26th April, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.K.Malik, for the petitioner.
Mr. Manoj Bhandari, for the respondents.

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By this petition for writ a claim is made by the petitioner for payment of annuity benefits @ 250/- per month from 12.9.1975 onwards, @ Rs.400/- per month w.e.f. 1.1.1995 and @ Rs.500/- per month w.e.f. 1.3.1997 onwards. A claim is also made for payment of ex-gratia @ Rs.150/- per month w.e.f. 1.11.1991 with admissible allowances, however, at the time of hearing learned counsel for the petitioner mainly pressed into service the contentions pertaining to claim for annuity only.

In brief, facts of the case are that the husband of the petitioner Late Shri Megharam while in service of Rajasthan State Electricity Board died on 12.9.1975. The petitioner at first instance claimed for appointment on compassionate/preferential basis, however, same was not given to her as no vacant post was available. The petitioner was advised to claim for

annuity benefits, accordingly, she applied for the same in prescribed proforma. Despite various representations the annuity benefit was not extended to the petitioner. Hence, the petitioner preferred this petition for writ.

It is relevant to note that the Rajasthan State Electricity Board in its 399th meeting held on 27.8.1999 decided to provide monitory benefits to the dependents of the deceased employees of the Board in the shape of annuity in the cases where preferential appointment could not be given. The decision aforesaid was made applicable to all pending cases where death of the employee occurred on and after 1.9.1985. The respondents denied annuity benefit to the petitioner on the count that her husband died on 12.9.1975 i.e. earlier to the cut off date i.e. of 1.9.1985 prescribed to cover the cases for grant of monitory benefit in pursuant to the Board's decision dated 27.8.1999.

This Court by order dated 16.10.2006 directed the respondents to place on record the reasons for fixing 1.9.1985 as cut off date for grant of annuity to the dependents of the deceased employees of the Board. In compliance thereto the entire proceedings of the meeting dated 27.8.1999 were shown to the Court and was also thoroughly examined by counsel for the respondents but no reason to fix 1.9.1985 as cut off

date for grant of annuity benefits was found therein, accordingly, on 26.3.2007 a direction was given to the respondents to file a specific statement by way of additional affidavit to provide reasons for fixing 1.9.1985 as cut off date for grant of annuity. Such statement is given in the form of an additional affidavit sworn-in by Shri Anil Kumar Pahwa, Personnel Officer (O & M) JVVN Ltd. Churu, stating as under:-

> "4.That it is submitted that the cut off date has been fixed looking to the situation existing in the year 1990, wherein the claimant of the annuity benefit which were brought forth before the erstwhile RSEB for its payment, were all pertaining to the employees of the erstwhile RSEB who had died on or after 1st Sept., 1985. Therefore, looking to the facts and circumstances existing at that time, the date 1st Sep., 1985 was fixed. It is the settled law that there has to be some cut off date and for bifurcation of grant of any particular benefit, such a fixation of cut off date, cannot be said to be arbitrary. It is true that there had been no cogent reasons given in the record for fixing the particular cut off date, but it is equally true that the cut off date has been fixed by the Board looking to the facts and circumstances existing as on the date of the meeting of the Board dated 27.8.1990. It is also a settled law that no order which has been issued by the Administration can be given retrospective effect. But still, the Erstwhile RSEB though it fit to give the

> order retrospective effect as the order dated 11th Oct., 1990 was given effect from 1st Sept., 1985. Hence, the order dated 11.10.1990 is absolutely legal and justified.
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> 5.That however in pursuance of the orders passed by this Hon'ble Court, the record has been gone through by the Competent Authority i.e. by the Secretary, Administration, Jaipur Vidyut Vitran Nigam Limited and it had issued a letter to the Secretary, Administration, Jodhpur Discom that although there is nothing on record from which the reasons can be ascertained but, it has been submitted that the decision was taken by the then Chairman, RSEB at the relevant time looking to the exigencies of service."

The Secretary of the Jaipur Vidhyut Vitran Nigam Limited also conveyed to the Secretary (Administration), Jodhpur Vidhyut Vitran Nigam Limited, Jodhpur by a communication dated 10.4.2007 that there was nothing on record from which it could be ascertained that why 1.9.1985 was chosen as cut off date for grant of annuity benefits.

In view of the factual position as above, it is clear that there was no reason available with the respondents for fixing 1.9.1985 as cut off date for extending annuity benefit.

Learned counsel for the respondents while placing reliance upon a judgment of Hon'ble Supreme

Court in the case of Ramarao and others v. All India Backward Class Bank Employees Welfare Association and others, [(2004)2 SCC 76], and upon the judgment in the case of State of W.B. And another v. W.B. Govt. Pensioners' Associations and others, [(2002)2 SCC 179], urged that though no reason was available to fix 1.9.1985 for grant of annuity benefit but the cut off date so fixed is in no manner arbitrary or unreasonable. It is also urged that there was no malice in fixing 1.9.1985 as cut off date for grant of annuity.

Heard counsel for the parties.

It is true that the cut off date prescribed cannot be held illegal unless i.e. held to be arbitrary or unreasonable, however, at the same time no cut off date can be prescribed arbitrarily, irrationally, whimsically or capriciously specially when it restricts the flow of a decision taken to provide an helping hand as a measure of compensation.

In the instant matter the respondent Board in its meeting dated 27.8.1999 decided to provide monitory benefit to the dependents of the deceased employees of the Board in the shape of annuity. Such annuity was given for certain specific reasons, those are prescribed in the scheme itself, that reads as follows:-

> "The Board in its 399th meeting held on 27th August, 199 has decided to provide monetory benefit to the dependents of the deceased Board's employees in the shape of annuity benefit on the following lines in cases where preferential appointment can not be given on account of various reasons viz. The dependents left behind are either quite old to seek employment or too young to accept employment or the widow is claiming the post of helper which is not suitable for women or due to some other reasons, it can not be possible to provide employment as a result of the above reasons and the policy of giving preferential employment to one of the dependents of the deceased employee of the Board may not be of much assistance of the family of such deceased employee."

The object of grant of annuity benefit was to provide an helping hand to the dependents of deceased employees of the Board in the cases where it was not possible to grant preferential appointments or where widow claiming post of helper was not suitable to be appointed for one or other reason. The object of the scheme is to provide a compensation in lieu of employment. The petitioner being a widow of an employee of the Board was certainly having a claim for appointment on preferential basis, but that was not given to her only being a woman and that being so not fit to be appointed as helper. As a matter of fact the annuity is nothing but only a compensation in lieu of

appointment. A classification has been introduced by placing 1.9.1985 as a cut off date in the scheme for grant of annuity benefits among the similarly situated persons those are aspirants for appointment on preferential basis. I failed to understand any rational behind that. In such circumstances the fixing of cut off date as 1.9.1985 for grant of annuity benefits is certainly unjust and arbitrary and discriminatory too. The same, therefore, is illegal.

Hence, this petition for writ is allowed. The cut off date prescribed under the decision of the respondent Board dated 27.8.1999 in its 399th meeting prescribing 1.9.1985 as a cut off date for extending annuity benefit is declared illegal. Accordingly, the petitioner is declared entitled for getting annuity in accordance with the decision of the Board, referred above. The respondents shall make the payment of annuity to the petitioner within a period of three months from today.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.